

1 Thomas A. Rist (SBN 238090)
2 **RIST LAW OFFICE, LC**
3 2221 Camino Del Rio South, Suite 300
4 San Diego, CA 92108
5 (619) 377-4660
6 tom@sdvictimlaw.com

7 Attorney for Plaintiffs

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

3/4/2024 10:26 AM

By: Eric Rowe, DEPUTY

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO**

13 AMBER EDWARDS, an individual, and
14 other aggrieved employees,

15 Plaintiffs,

16 vs.

17 RIALTO POCKETS, INC., a California
18 Corporation and DOES 1 through 10,
19 inclusive,

20 Defendants.
21

CIVSB2407269
CASE NO.

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
(Labor Code §§2698, *et seq.*)**

1 Plaintiff AMBER EDWARDS, on behalf of herself and all others similarly situated, files this
2 Complaint against defendant RIALTO POCKETS, INC., a California corporation and Does 1 to 10
3 (collectively “Defendants”). Plaintiff is informed and believes and on the basis of that information
4 and belief alleges as follows:

5 **INTRODUCTION**

6 1. This matter arises out of Defendants’ illegal scheme requiring dancers at their exotic
7 club to share tips with management as well as the establishment of a piece rate payment scheme that
8 was not recorded or reflected on wage statements.

9 **PARTIES**

10 ***Plaintiff***

11 2. Plaintiff AMBER EDWARDS is an individual over the age of eighteen (18) and is a
12 resident of San Bernardino County, State of California. Throughout the Relevant Time Period, Ms.
13 Edwards worked for Defendant as a non-exempt employee in Defendant’s business located in Rialto,
14 San Bernardino County, California.

15 ***Defendant Rialto Pockets, Inc.***

16 3. Plaintiff is informed and believes and based thereon alleges that Defendant Rialto
17 Pockets, Inc. is now and/or at all times mentioned in this Complaint, headquartered in California, and
18 qualified and registered to do business in the State of California, with a corporate office located at in
19 San Bernardino County and performs substantial business in California.

20 ***Defendant Does 1 through 10, Inclusive***

21 4. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Complaint
22 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
23 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
24 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant to
25 California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
26 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 10
27 are believed to be business entities who were also co-employers of the Plaintiff and the other aggrieved
28 employees herein.

1 ***All Defendants***

2 5. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
4 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
5 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
6 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
7 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
8 taken by the other co-Defendant, as herein alleged and was responsible in whole or in part for the
9 matters referred to herein.

10 6. Plaintiff is informed and believes and based thereon alleges that at all times herein
11 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
12 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
13 damages alleged in this Complaint.

14 7. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
15 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
16 a joint venture, partnership and common enterprise, and were acting within the course and scope of,
17 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers
18 of the Plaintiff and the other aggrieved employees.

19 8. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
20 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
21 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
22 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

23 **JURISDICTION AND VENUE**

24 9. The California Superior Court has jurisdiction in the matter because the claims exceed
25 the jurisdictional minimum of this court and Defendant performs substantial business in the State of
26 California. Further, the issues herein are based on California statutes and law including the California
27 Labor Code.

28 10. Venue is proper in the County of San Bernardino because Defendants transact

1 substantial business in this County, Plaintiff's claims arose in this County, and because Defendants
2 maintain locations in the County of San Bernardino.

3 **FACTUAL ALLEGATIONS**

4 11. Defendants operate an adult entertainment club known as Spearmint Rhino
5 Gentlemen's Club in San Bernardino County, California.

6 12. From 2021 to present, Plaintiff worked for Defendants as an Entertainer.

7 13. During this time period, Defendants knowingly and intentionally allowed management
8 to take tips from Plaintiff and other aggrieved employees.

9 14. Defendants even instituted a scheduling system which punished employees who paid
10 no tips or less in tips to management than other employees because managers made the decisions on
11 when Plaintiff and other aggrieved employees would be scheduled. Thus, Plaintiff and other aggrieved
12 employees were forced to participate in the illegal tipping scheme in order to obtain favorable
13 scheduling. This system allowed Defendants' management to perceivably retaliate against any
14 employees who refused to participate in the management tipping scheme.

15 15. Defendant additionally failed to provide accurate itemized wage statements that
16 complied with the California Labor Code and applicable wage orders. Specifically, Plaintiff and other
17 aggrieved employees did not receive wage statements that showed the total number of piece rate units
18 earned while working at the club.

19 16. Defendants set the pricing for private dances at the club and required Plaintiff and other
20 aggrieved employees to earn a certain amount of money per night working these private dances. After
21 they met this minimum threshold, Plaintiff and other aggrieved employee would then earn 50% of
22 what the club charged on each private dance thereafter. This system of pay is a piece-rate payment
23 system under California law because Plaintiff and other aggrieved employees are being paid a set
24 amount for each action completed.

25 17. Defendants failed to record the number of piece rate units earned by Plaintiff and other
26 aggrieved employees.

27 18. Defendants further failed to provide wage statements showing the piece rate units
28 earned by Plaintiff and other aggrieved employees as required by the California Labor Code.

19. Plaintiff has complied with all procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated September 22, 2022, Plaintiff, on behalf of herself and the other aggrieved employees, gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleges to have been violated, including the facts and theories to support the alleges violations. More than sixty-five (65) days have passed since that letter was sent and the LWDA has not responded to Plaintiff’s allegations.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code §§ 2698 *et seq.*)

20. Plaintiff incorporates by reference the allegations set forth above.

21. This action arises out of the unlawful labor practices of Defendants in California. Through this action, Plaintiff represents herself and other aggrieved employees of Defendants that were based out of California, against whom Defendants have committed labor law violations, including, but not limited to, taking employee gratuities and failing to provide accurate paystubs. As a result of the alleged unlawful conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees and costs, pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA").

22. PAGA provides that for any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency for violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee pursuant to procedures outlines in California Labor Code § 2699.3.

23. Plaintiffs are aggrieved employees as defined in Labor Code § 2699, subdivision (a). Plaintiffs bring this action on behalf of herself and other current or former aggrieved employees affected by the labor law violations alleges in this complaint. At all relevant times, Plaintiffs and the other aggrieved employees have been entitled to the benefits and protections of the California Labor Code and Wage Order Number Five.

24. Pursuant to Labor Code § 2699.3, an aggrieved employee, may commence a civil action

1 arising under Labor Code § 2699 after the following requirements have been met:

- 2 a. The aggrieved employee shall give written notice (hereinafter “Notice”) by
3 certified mail to the Labor and Workforce Development Agency (hereinafter
4 “Agency”) and the employer of the specific provisions of the Labor Code alleges
5 to have been violated, including the facts and theories to support the alleges
6 violation.
- 7 b. The agency shall notify the employer and the aggrieved employee or representative
8 by certified mail that it does not intend to investigate the alleged violation within
9 sixty-five (65) calendar days of the postmark date of the notice received. Upon
10 receipt of that notice or if no notice is provided within sixty-five (65) calendar days
11 of the postmark date of the notice, the aggrieved employee may commence a civil
12 action pursuant to Section 2699.

13 25. Plaintiff has satisfied the jurisdictional prerequisites to the maintenance of this Cause
14 of Action as more fully set out in Labor Code § 2699.3 in that on or about September 22, 2022, Plaintiff
15 gave notice to the Labor and Workforce Development Agency of Defendants’ Labor Code violations,
16 including the facts and theories to support the alleged violations, and Plaintiff’s intent to recover
17 penalties based on the violation set forth herein. This same notice was served upon the Defendants in
18 this Action by certified mail on or about September 22, 2022.

19 **Taking of Employee Gratuities**

20 26. CA Labor Code § 351 provides, “[n]o employer or agent shall collect, take or receive
21 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron...[e]very gratuity
22 is hereby declared to be the sole property of the employee or employees to whom it was paid, given
23 or left for.”

24 27. Throughout the entire time period that Plaintiff and other aggrieved employees were
25 employed, Defendants required Plaintiff and other aggrieved employees to tip out management level
26 employees at the end of every single shift that they worked. If employees refused to tip out or shared
27 what was perceived by management as less than what they thought was reasonable, Defendants would
28 schedule Plaintiffs and other aggrieved employees on less desirable shifts and would shift them farther

1 down in a retaliatory system that was put in place to ensure management was being illegally tipped by
2 every employee.

3 28. As a result of the actions of Defendants in illegally taking gratuities, Plaintiff and other
4 aggrieved employees request payment of penalties under the Private Attorney's General Act, CA
5 Labor Code § 2699 *et seq.*, to be determined at trial, plus interest, attorneys' fees, and costs, against
6 Defendants in a sum as provided by the Labor Code and/or other statutes.

7 **Failure to Provide Accurate Itemized Wage Statements**

8 29. Labor Code § 226(a) and IWC Wage Order No. 5 and 10, § 7(B) require employers to
9 furnish each employee with a statement itemizing, among other things, the total hours worked by the
10 employee and the rates at which the employee was paid, on a semi-monthly basis or at the time of each
11 payment of wages.

12 30. Specifically, CA Labor Code §226(a) states in pertinent part: "(a) An employer,
13 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a
14 detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages
15 are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
16 earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the employee may be
19 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which
20 the employee is paid, (7) the name of the employee and only the last four digits of his or her social
21 security number or an employee identification number other than a social security number, (8) the
22 name and address of the legal entity that is the employer... and (9) all applicable hourly rates in effect
23 during the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee."

25 31. CA Labor Code § 226.3 sets forth an additional civil penalty on the employer of \$250
26 per employee, per violation of CA Labor Code § 226(a) for an initial violation and \$1,000 per
27 subsequent violation.

28 32. CA Labor Code §226(e) imposes a penalty of the greater of all actual damages or \$50

1 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a
2 subsequent pay period, not exceeding an aggregate penalty of \$4,000. Plaintiff and other aggrieved
3 employees are also entitled to an award of costs and reasonable attorney's fees under CA Labor Code
4 § 226(h).

5 33. Here, Defendants failed to provide Plaintiff and other aggrieved employees with
6 accurate itemized wage statements complying with the requirements of the Labor Code and applicable
7 IWC Wage Orders. Plaintiff and other aggrieved employees did not receive wage statements that noted
8 the correct number of hours worked, wages earned, or the number of piece-rate units earned.

9 34. Plaintiff and other aggrieved employees request payment of penalties under the Private
10 Attorney's General Act, CA Labor Code § 2699 *et seq.*, to be determined at trial, plus interest,
11 attorneys' fees, and costs, against Defendants in a sum as provided by the Labor Code and/or other
12 statutes.

13 **Failure to Maintain Accurate Records**

14 35. CA Labor Code § 1174 requires employers to maintain at a central location or
15 establishment where an employee is employed, payroll records showing the hours worked daily by
16 and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid
17 to, employees employed at the respective establishment.

18 36. Defendants violated this section by failing to accurately record employee piece-rate
19 units earned by Plaintiff and other aggrieved employees for private dances performed for customers.

20 37. CA Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
21 maintain accurate and complete records.

22 38. Additionally, Labor Code § 2699 provides a civil penalty of \$100 per initial pay period,
23 per aggrieved employee and \$200 per violation, per aggrieved employee for subsequent violations.

24 39. Plaintiff and other aggrieved employees request payment of penalties under the Private
25 Attorney's General Act, CA Labor Code § 2699 *et seq.*, to be determined at trial, plus interest,
26 attorneys' fees, and costs, against Defendants in a sum as provided by the Labor Code and/or other
27 statutes.

28 ///

1 **Penalties Authorized by PAGA**

2 40. Pursuant to California Labor Code Sections 2699(a) and (f), Plaintiff and the other
3 aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants'
4 violations of the California Labor Code.

5 41. California Labor Code 2699(a) states, "[n]otwithstanding any other provision of law,
6 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
9 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
10 former employees pursuant to the procedures specified in Section 2699.3."

11 42. California Labor Code 2699(f) states in part, provisions of this code except those for
12 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
13 provisions, as follows ...[i]f, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
15 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
16 for each subsequent violation.

17 43. Pursuant to California Labor Code § 2699(g), Plaintiff, on behalf of herself and the
18 other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs in bringing
19 this action.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 22 a. Civil penalties;
23 b. Other penalties and fines permitted by law;
24 c. Costs of suit;
25 d. Reasonable attorneys' fees; and
26 e. Such other relief as the Court deems just and proper.
27
28

DATED: March 4, 2024

RIST LAW OFFICE



By: _____
Thomas A. Rist
Attorneys for Plaintiff